Money management for people who may lack capacity

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Overview

• what the Mental Capacity Act (MCA) says about decision making
• what decisions can a person make about their money?
• if a person can’t make a decision, who makes it for them?
• legal safeguards for people who lack capacity to manage some or all aspects of their finances
What is capacity?

Capacity is the ability to make a decision
What types of decisions does the Act cover?

• what to wear
• what to eat
• what to do during the day
• where to live
• what medical treatment to have or not have
• how money is used
5 Principles of the Act

• Assume capacity
• Give people all possible support to make their own decisions
• Allow people to make unwise decisions
• If a person lacks capacity to make a decision, the decision made must be in their best interests
• Think about what could be less restrictive
1 - Assume capacity

- Always start by thinking that a person can make their own decision
2- Supporting people to make decisions

With support, people’s ability to make their own decisions can improve

- information
- communication
- timing
- location
Information

• what do people need to know
• what might help them to know
• what they do not need to know
Communication

- clear and simple language
- pictures and photos
Timing

- time of day
- one decision at a time
- don’t rush
- be prepared to try again later
Location

- background noise and distractions
- respect privacy
- familiar surroundings
3- People can make unwise decisions

• Just because a decision is unwise, doesn’t mean the person lacks capacity to make it

• Raymond - capacity to make a decision about spending £50 on lottery tickets?
When do we need to check if someone can make their own decision?

- There may be times where we have doubts in our mind about whether a person can make their own decision.
- This usually happens if we are worried about a decision someone is making or if they are refusing help.
- In we have concerns there may need to be a capacity assessment.
- If the person lacks capacity a decision has to be made in their best interests.
To lack capacity to make a decision

• The person must have a mental impairment or impairment of the functioning of the brain (includes learning disabilities, mental health conditions, dementia, brain injury, the symptoms of alcohol or drugs) and:

• The person must have been assessed as lacking capacity to make the specific decision.
Who can assess capacity?

- Capacity can be assessed by anyone.
- You do not need to be an expert.
- A ‘reasonable belief’ is allowed.
How to assess capacity

- Does the person **understand** the decision?
- Can they **use the information** you give them to help them decide?
- Do they **understand what will happen** as a consequence?
- Can they **tell you** their decision?
If the person can decide

- If ‘yes’ to all, they can make the decision (even if unwise)
- If ‘no’ to any, they lack capacity, and a ‘best interests decision’ needs to be made.
4 - The ‘best interests’ principle

• ‘An act done, or decision made for, or on behalf of a person who lacks capacity must be done, or made, in his best interests.’

• The Code of Practice sets out some things to think about when making a best interests decision. This is referred to as the ‘best interests checklist’
Who makes best interest decisions?

The person who will be taking action in someone’s best interests is the decision-maker.

This could be:

- A Doctor responsible for treatment
- A carer helping the person wash and get dressed in the morning
- A parent deciding what time the person goes to bed
Right to be consulted

Decision maker has to take into account the views of:

• anyone the person has named as someone who should be consulted
• anyone interested in their welfare (e.g. family carers, relatives, advocates)
• anyone who is an attorney or deputy
Best interests checklist

• Can the decision wait if the person could regain capacity?
• Support the person to be involved in decisions about them as much as possible
• What are the person’s past and present views and wishes?
• Consult with people interested in their welfare
• Consider all relevant information
• Think about what would be least restrictive
5 - Think about what could be less restrictive

Always think about whether anything else can be done that will interfere less with the person’s freedom.
Assumption should be that people can manage their money

Where the person has mental impairment and is showing some difficulty managing some aspect of their finance need to undertake a mental capacity assessment.

If a person lacks capacity to manage aspects of their finances a legal safeguard may be required. This could be either an attorney appointee or deputy.

Where a person has one of these it is still important to support the person to make as many decisions as possible about their money. Regardless of their ability to make decisions their views should be sought.

Where services or individuals working in them are either appointee or deputy they should be open about how they manage the potential conflict of interest
Think about a person you work with/care for.

For each of the decisions think about whether the person can make the decision themselves.

- Signing a tenancy agreement for accommodation
- Managing a direct payment (e.g. where the person would directly employ staff)
- Pay residential care fees
- Pay rent or a mortgage
- Opening a bank account
- Pay utility bills
- Pay for food
- Pay for clothing
- Pay for a holiday
Appointees

- What is an appointee
- When an appointee should be requested from DWP
- When an appointee is holding too much money and an application may need to be made for a property and affairs deputy
- How the appointee should involve the person in decisions
- How people can complain about the actions of an appointee
Lasting powers of attorney

- What is an LPA?
- How people can be supported to make an LPA. To include that people may lack capacity to make some financial decisions but could still make an LPA
- How staff should respond to being asked to being an attorney – should they offer themselves to be such (many people in service may not have anyone else to be their attorney)
- How people can complain about the actions of an LPA
Deputies

- What is a property and affairs deputy and how appointed
- What it costs
- When should an application be made, and by whom
- Who could act as a deputy (including corporate deputies) specifically addressing good practice in avoiding a conflict of interests.
- How people can complain about the actions of a deputy
Applying to be a PFA Deputy

• to sign a tenancy agreement to rent a property - yes
• to enter into a mortgage agreement to buy a property – yes
• if the person has a lot of money to manage – yes
Supporting people who do not have an appointee/attorney/deputy

- What to do if there are concerns about the person’s ability to manage aspects of their money
- What those concerns might look like, e.g. family or staff very influential in how the person spends their money, evidence that the person doesn’t understand some aspects of money management.
- Service practices which would be unacceptable if the person is able to manage all aspects of their finances (i.e. they don’t have an appointee, LPA or deputy)
- Good practice in supporting people to manage their own money
- Bad practice in this area, for example staff having access to pin numbers for bank cards
Supporting people who do have an appointee/attorney/deputy

- Deciding what aspects of their money a person can manage themselves and ways this can be supported
- Good practice in making best interest decisions about money
- Good practice in bank accounts including possibly an account for the person for amounts of money they could manage
- The appointee, deputy or attorney delegating aspects of money management to support staff (e.g. give regular amount of money to the service to make decision on how to spend with the person)
- Good practice in accountability for appointee, attorney and deputies including managing the potential conflict of interests
- Bad practice in this area, for example staff having access to pin numbers for bank cards
Roger’s assessment

• Roger is a man with learning disabilities
• Lives in a supported living service
• An assessment of his mental capacity to make different financial decisions is being undertaken by Tracey, a social worker.
• The assessment covers different types of financial decisions including day-to-day expenditure and paying household bills.
What to do when people disagree

If people disagree about what is in a person’s best interests the decision maker must try and balance these views – but they will make the final decision.

If you want to challenge a decision you can

• Ask for a second opinion
• Hold a best interests meeting
• Use a complaints procedure
• In serious cases where disagreement cannot be resolved matters should be taken to the Court of Protection
The Court of Protection

• makes decisions about a person’s capacity
• makes decisions about best interests
• can appoint Deputies with powers to make decisions on a persons behalf
Planning ahead

- Letting people know your wishes

- **Lasting Powers of Attorney** (Property and Affairs – Health and Welfare). Forms from Office of the Public Guardian

- **Advanced decisions to refuse treatment** (including life sustaining treatment if written down, signed and witnessed)
Contact details

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